

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
NEW BERN DIVISION

IN THE MATTER OF:

CASE NUMBER:

CONNECTICUT AVENUE PARTNERS, LLC

07-04806-8-RDD

DEBTOR(S)

(CHAPTER 7)

**MOTION TO DEEM BUYER IN DEFAULT**  
**UNDER SALES CONTRACT AND FOR RE-SALE OF REAL ESTATE**

Now comes JOHN C. BIRCHER III ("Trustee"), trustee in the above-referenced matter, and hereby moves the court to deem buyer/assignee Five Points Hospitality in default under the sales agreement executed on July 17, 2009. In support of this Motion, the Trustee shows unto the court as follows:

1. This matter is a core proceeding pursuant to 28 U.S.C. §157, and the court has jurisdiction pursuant to 28 U.S.C. §§151, 157, and 1334. The court has the authority to hear this matter pursuant to the General Order of Reference entered August 3, 1984, by the United States District Court for the Eastern District of North Carolina.

2. Upon the Application to Employ Auctioneer filed by the Trustee, the court entered an Order which approved the employment of Mike Gurkins and Country Boys Auction & Realty, Inc. ("Auctioneer") as auctioneer in this case.

3. The Trustee filed a Notice of Proposed Public Sale and Notice of Compensation of Auctioneer ("Notice") dated June 26, 2009, which was served on all creditors. The Trustee also filed his Motion to Sell Free and Clear of Liens which more specifically set forth compensation agreed upon between the first lienholder and the Trustee and Auctioneer. An order was entered granting said motion on July 15, 2009. The Motion specifically set forth the terms of compensation, and no objections were filed to said motion.

4. On July 16, 2009, the Auctioneer, under the direction of the Trustee, conducted a public auction of certain assets of the bankruptcy estate. The sale of the assets brought gross proceeds of \$1,260,000.00. An itemization of the property sold, sales price, and purchaser is attached hereto as Exhibit A. The real and personal property was scheduled in the documents filed with the court at a value of \$4,000,000.00.

5. Pursuant to the compensation schedule as set forth in the Motion to Sell Free & Clear, the Auctioneer is entitled to receive commissions in the amount of \$51,900.00.

6. That according to the terms and conditions of the sales contract, the Buyer must close the sale of the real estate within 30 days of confirmation of the sale by the Court. See Exhibit A.

7. That on August 21, 2009, this Court entered an Order Granting Motion for Confirmation and Compensation of Auctioneer, and pursuant to the sales contract, the Buyer had until September 21, 2009.

8. On September 21, 2009, Trustee and the Buyer entered into an Extension and Assignment Agreement ("Extension") wherein the Trustee agreed to extend the final closing date for the Buyer/Assignee up to and including October 21, 2009 in exchange for an extension fee of \$125.00 per day to be paid in advance.

9. The Extension further provided for an additional month's extension up to and including November 25, 2009, provided that the Buyer/Assignee pay an extension fee of \$150.00 in advance of the October 21, 2009 deadline. See *Exhibit B*.

10. That the Buyer/Assignee paid an additional extension fee for the period of November 26, 2009 through January 6, 2010 in the amount of \$8,250 at the increased per diem of \$200.00.

11. That despite further conversations regarding obtaining a fixed closing date, the Trustee became aware that the Buyer/Assignee has yet to even obtain approval for a loan to close the real estate transaction from July 2009.

12. That recently the Buyer/Assignee proposed to change the terms of the sale contract due to the difficulty in obtaining a commitment from a financial institution for the purchase and remodeling of the real estate.

13. That the Trustee believes it is in the best interest of the estate to reject the offer of the Buyer/Assignee and move to cancel the contract currently in default and to re-sell the real estate.

14. That the Buyer/Assignee agreed, pursuant to the terms of the contract that in the event of a breach by Buyer, the Buyer shall be responsible for paying to the Trustee all costs of resale, including, but not limited to, any decrease in the resale price, all advertising expenses, all attorneys' fees, trustees' fees and expenses incurred in connection with the breach of the Contract and subsequent resale of the real estate.

15. That the Trustee asserts that the Buyer/Assignee is in breach under the terms of the purchase contract as the Buyer has failed to close on the purchase under the original purchase agreement and the subsequent Extension and Assignment Agreement.

16. Furthermore, the Trustee, pursuant to the contract, is entitled to retain the deposit for application to damages for such breach.

WHEREFORE, the Trustee prays the court to enter an order as follows:

1. To deem the Buyer/Assignee in breach of the purchase contract entered on July 16, 2009;
2. To allow Trustee to deduct costs of the sale and any fees and expenses incurred in connection with the breach of the purchase contract from the deposit currently held by Trustee;
3. To approve the re-sale of the real estate that is the subject of the purchase contract;
4. To grant such other relief as the court deems just and appropriate.

Dated: March 15, 2010

/s/ John C. Bircher III  
John C. Bircher III  
WHITE & ALLEN, PA  
Attorneys for the Trustee  
1319 Commerce Drive  
Post Office Drawer U  
New Bern, NC 28563  
NC State Bar No. 24119  
252.638.5792

EXHIBIT A

| <u>Purchaser</u> | <u>Description of Property</u> | <u>Purchase Price</u> |
|------------------|--------------------------------|-----------------------|
| Samkhit Patel    | 925 Broad Street, New Bern, NC | \$1,260,000.00        |

NORTH CAROLINA

CRAVEN COUNTY

EXTENSION AND ASSIGNMENT AGREEMENT

THIS EXTENSION AND ASSIGNMENT AGREEMENT by and between John C. Bircher, III, in his capacity as Trustee for the Bankruptcy Estate of Connecticut Avenue Partners, LLC (hereinafter "Seller"); Sanmukh Patel (hereinafter "Buyer") and Five Points Hospitality, LLC (hereinafter "Assignee") is as follows:

WITNESSETH:

WHEREAS, Seller and Buyer heretofore executed a certain Sale Agreement Offer to Purchase (hereinafter "the Contract") dated July 16, 2009 for real property located at 925 Broad Street, New Bern, Craven County, North Carolina; and,

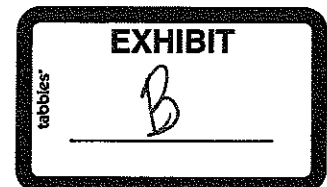
WHEREAS, Buyer has requested and Seller has agreed to extend the closing date under the Contract upon the terms and conditions herein stated; and,

WHEREAS, Buyer desires to assign the Contract to Assignee and Assignee does desire to assume and perform all conditions of the Contract, and Seller so consents.

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) paid by each party to the other, Seller, Buyer and Assignee agree as follows:

1. The closing date under the Contract may be extended by Buyer until October 21, 2009, upon the payment at the execution of this agreement by Buyer to Seller of an extension fee of \$125.00 per day for each day extended from September 20, 2009 until October 21, 2009. The closing date may be further extended by Buyer until November 25, 2009 upon the payment on or before October 21, 2009 of an extension fee equal to \$150.00 per day for each day extended from October 21, 2009 until November 25, 2009.

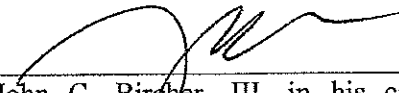
2. If the Buyer closes this sale before the expiration of the applicable extension period, the prorated balance of the extension fee shall be credited at closing against the purchase price.



3. The Contract is hereby assigned from Buyer to Assignee, and Assignee agrees to perform and assume all obligations of Buyer under the Contract. Buyer shall have no further obligations or rights with respect to the Contract.

Dated effective this 21<sup>st</sup> day of September, 2009.

SELLER:

  
\_\_\_\_\_  
John C. Bircher, III, in his capacity as  
Trustee for the Bankruptcy Estate of  
Connecticut Avenue Partners, LLC

BUYER:

\_\_\_\_\_  
Sanmukh Patel

ASSIGNEE:

Five Points Hospitality, LLC

By: \_\_\_\_\_  
Peter Patel, Manager

STATE OF NORTH CAROLINA  
COUNTY OF CRAVEN

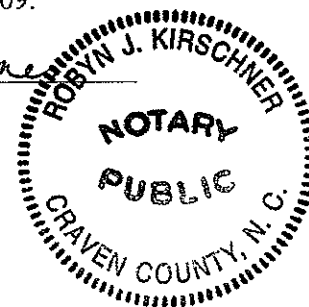
I, ROBYN J. KIRSCHNER, a Notary Public of the aforesaid County and State, do hereby certify that John C. Bircher, III, Trustee for the Bankruptcy Estate of CONNECTICUT AVENUE PARTNERS, LLC, a limited liability company, each personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

WITNESS my hand and notarial seal, this 29th day of September, 2009.

My Commission Expires:

5/30/2012

Robyn J. Kirschner  
NOTARY PUBLIC



STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public of the aforesaid County and State, do hereby certify that SANMUKH PATEL personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and notarial seal, this \_\_\_\_\_ day of September, 2009.

My Commission Expires:

\_\_\_\_\_  
NOTARY PUBLIC

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public of the aforesaid County and State, do hereby certify that Peter Patel, Manager of FIVE POINTS HOSPITALITY, LLC, a limited liability company, each personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

WITNESS my hand and notarial seal, this \_\_\_\_\_ day of September, 2009.

My Commission Expires:

\_\_\_\_\_  
NOTARY PUBLIC

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**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
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**IN THE MATTER OF:**

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**DEBTOR(S)**

**(CHAPTER 7)**

**NOTICE OF MOTION**

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you do not want the court to grant the Motion, or if you want the court to consider your views on the motion, then on or before fourteen (14) days from the date of this notice, unless otherwise ordered, you or your attorney must file with the court, a written response, an answer explaining your position, and a request for hearing at:

United States Bankruptcy Court  
1760-A Parkwood Blvd.  
Wilson, NC. 27894

If you mail your response to the court for filing, you must mail it early enough so the court will receive it on or before the date stated above.

You must also mail a copy to:

Bankruptcy Administrator  
PO Box 3758  
Wilson, NC 27894

Craven County Tax Collector  
Attn: Managing Agent  
226 Pollock Street  
New Bern, NC 28560

City of New Bern Tax  
Attn: Managing Agent  
PO Box 1129  
New Bern, NC 28563

Trawick H. Stubbs, Jr.  
Attorney at Law  
PO Drawer 1654  
New Bern, NC 28563

Connecticut Avenue Partners, LLC  
25 Alpine Street  
Boston, MA 02126

Mehta Group, Inc.  
Attn: Managing Agent  
4129 Howell Park Road  
Duluth, GA 30096-1731

Small Business Administration  
c/o US Attorney  
Attn: Managing Agent  
310 New Bern Ave, Ste 800  
Raleigh, NC 27601

Arey W. Grady, Esq.  
Attorney for Five Points Lodging, LLC  
416 Pollock Street  
New Bern, NC 28560

John C. Bircher III  
WHITE & ALLEN, P.A.  
P.O. Drawer U  
New Bern, NC 28562

If a response and a request for hearing is filed in writing on or before the date set above, a hearing will be conducted on the motion.

If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the motion or objection and may enter an order granting the relief.

Date: March 15, 2010

Signature: /s/ John C. Bircher III  
John C. Bircher III



CERTIFICATE OF SERVICE

I, John C. Bircher III, certify:

That I am, and at all times hereinafter mentioned was, more than eighteen (18) years of age;

That on the 16th day of March, 2010 I served a copy of the Motion to Deem Buyer/Assignee in Default and Motion for Re-Sale and Notice of Motion:

Marjorie K. Lynch, Esq.  
Bankruptcy Administrator  
PO Box 3758  
Wilson, NC 27894

Craven County Tax Collector  
Attn: Managing Agent  
226 Pollock Street  
New Bern, NC 28560

City of New Bern Tax  
Attn: Managing Agent  
PO Box 1129  
New Bern, NC 28563

Trawick H. Stubbs, Jr.  
Attorney at Law  
PO Drawer 1654  
New Bern, NC 28563

Connecticut Avenue Partners, LLC  
25 Alpine Street  
Boston, MA 02126

Mehta Group, Inc.  
Attn: Managing Agent  
4129 Howell Park Road  
Duluth, GA 30096-1731

Small Business Administration  
c/o US Attorney  
Attn: Managing Agent  
310 New Bern Ave, Ste 800  
Raleigh, NC 27601

Arey W. Grady, Esq.  
Attorney for Five Points Lodging, LLC  
416 Pollock Street  
New Bern, NC 28560

by depositing same in the United States mail, first class, postage prepaid.

I certify under penalty of perjury that the foregoing is true and correct.

This the 16th day of March 2010.

/s/ John C. Bircher III  
John C. Bircher III  
Attorney for Trustee